State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3093/P2
GMM:jld&wlj:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 102.31 (2m) and 102.65 (3); ***to renumber and amend*** 102.17 (4), 102.29 (6), 102.32 (intro.), 102.32 (1), 102.32 (2), 102.32 (3), 102.32 (4) and 102.555 (1); ***to amend*** 102.01 (2) (f), 102.11 (1) (intro.), 102.12, 102.16 (1), 102.16 (1m) (a), 102.16 (1m) (b), 102.16 (2) (a), 102.16 (2) (am), 102.16 (2m) (a), 102.16 (2m) (am), 102.16 (2m) (c), 102.16 (2m) (g), 102.16 (3), 102.18 (1) (bg) 1., 102.18 (1) (bg) 2., 102.18 (6), 102.29 (7), 102.29 (8), 102.29 (8m), 102.29 (8r), 102.29 (10), 102.32 (5), 102.32 (6m), 102.42 (1), 102.42 (4), 102.425 (3) (a) 1., 102.425 (4) (b), 102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.44 (6) (b), 102.64 (2), 102.66 (1), 102.66 (2), 102.80 (3) (ag), 102.83 (1) (a) 1., 102.83 (1) (a) 2., 102.83 (1) (a) 3., 102.83 (1) (a) 4., 102.83 (1) (b), 102.83 (2), 102.83 (3), 102.83 (4), 102.83 (8), 102.835 (2), 102.835 (4) (a), 102.835 (4) (c), 102.835 (5) (a), 102.835 (7) (a), 102.835 (12), 102.835 (13) (a), 102.835 (13) (b), 102.835 (13) (d), 102.835 (14), 102.835 (19), 626.35 (1), 631.37 (3) and 632.98; and ***to create*** 102.16 (1m) (c), 102.18 (1) (bg) 3., 102.29 (6) (b), 102.29 (6m), 102.315, 102.425

(4m), 102.555 (1) (c), 102.555 (12) and 102.835 (1) (ad) of the statutes; **relating to:** making various changes in the worker's compensation law.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development (DWD).

GENERAL COVERAGE

Employee leasing companies. Under current law, a professional employer organization or an employee leasing organization that enters into an employee leasing agreement with a client must submit to DWD, within ten working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the agreement, and such other information as DWD prescribes and an employee leasing organization that intends to terminate an employee leasing agreement must notify DWD of that termination no later than 30 days prior to the termination date of the agreement. Currently, when an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation insurance policy of the employee leasing organization is not effective until 30 days after the employee leasing organization has given notice of the termination of that agreement to DWD.

This bill eliminates those current requirements relating to employee leasing organizations and instead provides that a person that contracts to provide the nontemporary, ongoing employee workforce of a client under an employee leasing agreement (employee leasing company) ~~is the employer of an employee whose services are obtained by the client under the agreement (leased employee) for purposes of worker's compensation~~, is liable for any worker's compensation payable to the leased employee and may not seek or receive reimbursement from the client for any payments made as a result of that liability.

Subject to certain exceptions, the bill requires an employee leasing company to insure its worker's compensation liability by obtaining a contract of insurance under which the insurer issues separate worker's compensation policies to the employee leasing company for each of its clients that are insured by the insurer (multiple coordinated policy). A multiple coordinated policy must name both the employee leasing company and the client as named insureds and must designate either the employee leasing company or the client, but not both, as the first named insured. An insurer may issue a multiple coordinated policy for a client only if all of the employees of the client are leased employees and are covered under the policy, except that an insurer may issue a multiple coordinated policy for a client that has a workforce in which some of the employees are leased employees and some are not leased employees (divided workforce) if DWD has approved a plan under which two policies are issued to cover the employees of the client, one covering the leased employees of the client and the other covering the employees of the client who are not leased employees (divided workforce plan).

issuance of an insurance policy covering the leased employees of

Under the bill, an employee leasing company may also insure its worker's compensation liability by obtaining a single policy in its name covering more than one client of the employee leasing company (master policy) that has been approved by the commissioner of insurance (commissioner). The commissioner may approve the issuance of a master policy if the insurer shows that it has the technological capacity and operational capability to provide to the Wisconsin Compensation Rating Bureau (bureau) certain information at the client level, including unit statistical data, information concerning proof of coverage and cancellation termination, and nonrenewal of coverage, and any other information that the bureau may require. A master policy must also establish rules governing the ~~insurance of~~ a divided workforce and the cancellation, termination, and nonrenewal of policies.

Regardless of whether the commissioner has approved the issuance of a master policy, the bill permits an employee leasing company to insure its worker's compensation liability with respect to a group of clients, each of which has an unmodified annual premium that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria of the bureau (small clients) by obtaining a master policy in the voluntary market (as opposed to under the state mandatory risk-sharing plan, which is a plan established or approved by the commissioner under which risks that are unable to obtain coverage in the voluntary market may obtain coverage) insuring that liability. An insurer may issue a master policy covering a group of small clients regardless of whether any of those small clients has a divided workforce. If at any time the unmodified annual premium of a small client that is covered under a master policy exceeds the threshold below which employers are not experience rated, the employee leasing company must notify the insurer and obtain coverage for the small client under a multiple coordinated policy or a master policy that has been approved by the commissioner.

the client notifies DWD of its intent to have a

In addition, the bill permits an insurer to issue a policy covering only the leased employees of a client that has a divided workforce if ~~DWD specifically consents to a~~ divided workforce ~~plan~~. Under the bill, a client that has a divided workforce must insure its employees who are not leased employees in the voluntary market and may not insure those employees under the state mandatory risk-sharing plan, unless the leased employees of the client are covered under that mandatory plan. A client that has a divided workforce must also agree to assume full responsibility to immediately pay any worker's compensation payable as may be required by DWD should a dispute arise between two or more insurers as to liability for an injury sustained while a divided workforce plan is in effect, pending final resolution of the dispute.

For a multiple coordinated policy in which an employee leasing company is the first named insured, or in which the client is the first named insured and for which premium payments are coordinated under an employee leasing agreement, and for a master policy, the bill permits an insurer to obligate only the employee leasing company to pay premiums due for a client's coverage and prohibits an insurer from recovering any unpaid premiums due for that coverage from the client. The bill, however, does not prohibit an insurer from collecting premiums and charges due with respect to a client by means of list billing through the employee leasing company; requiring an employee leasing company to maintain a letter of credit or

other form of security to ensure payment of premiums; issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company; grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients; applying a discount to the premium charged with respect to a client; or applying a retrospective rating option for determining the premium charged with respect to a client.

Finally, the bill provides as follows with respect to the cancellation, termination, or nonrenewal of a multiple coordinated policy or a master policy:

1. That the insureds under the policy may cancel the policy during the policy period only if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client in writing or by the client agreeing to the cancellation in writing, ~~and notice of the cancellation is provided to the insurer~~.

2. That the insurer may cancel, terminate, or nonrenew the policy by providing written notice of the cancellation, or nonrenewal to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period is not effective until 30 days after that notice is provided. Nonrenewal of a policy is not effective until 60 days after that notice is provided.

3. That, if an employee leasing company that is the first named insured on the policy terminates the employee leasing agreement with a client in its entirety, the insurer may cancel or terminate the policy during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period for reason of termination of an employee leasing agreement is not effective until 30 days after that notice is provided.

4. That, if an employee leasing agreement is terminated during the policy period of a policy in which the client is the first named insured, the insurer must cancel the employee leasing company's coverage by an endorsement to the policy, and coverage of the client under the policy continues, unless the policy providing continued coverage is cancelled for failure of the client to pay premiums or for other grounds stated in the policy.

Third-party liability. Under current law, worker's compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker's compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Current law, provides, however, that an employee of a temporary help agency who makes a claim for worker's compensation may not make a claim or bring an action in tort against any employer who compensates the temporary help agency for the employee's services.

Recently, in *Warr v. QPS Companies, Inc.*, 2007 WI App 14, 298 Wis. 2d 440, the court of appeals held that the exclusive remedy provision of the worker's compensation law did not bar an employee of a temporary help agency who was

injured by the conduct of an employee of another temporary help agency who was placed with the same employer from bringing an action in tort against the temporary agency employing the latter employee.

This bill prohibits an employee of a temporary help agency who makes a claim for worker's compensation against the temporary help agency from making a claim or bringing an action in tort against any other temporary help agency that is compensated for another employee's services by the same employer that compensates the temporary help agency for the employee's services or against any employee of the compensating employer of or that other temporary help agency. Similarly, the bill also prohibits an employee who makes a claim for worker's compensation against an employer that compensates a temporary help agency for another's employee's services from making a claim or bringing an action in tort against the temporary help agency or against any employee of the temporary help agency.

In addition, the bill narrows the definition of "temporary help agency" for purposes of the worker's compensation law. Specifically, under current law, a temporary help agency is defined as an employer who places its employee with or leases its employees to another employer who controls the employee's work activities and compensates the first employer for the employee's services, regardless of the duration of the services. This bill defines a temporary help agency as an employer that is *primarily engaged in the business* of placing or leasing its employees under those conditions.

Prescription drug treatment. Under current law, an employer or insurer is liable for providing medicines as may be reasonably required to cure and relieve an injured employee from the effects of an injury sustained while performing services growing out of and incidental to employment. Current laws, however, limits the liability of an employer or insurer for the cost of a prescription drug dispensed for outpatient use by an injured employee to the average wholesale price of the prescription drug as quoted in the American Druggist Blue Book or the Drug Topics Red Book, whichever is less. This bill limits the liability of an employer or insurer for the cost of such a prescription drug to the average wholesale price of the prescription drug, as quoted in the Drug Topics Red Book.

Currently, if an employer denies or disputes liability for the cost of a drug prescribed to an injured employee, the pharmacist or other person licensed to prescribe and administer drugs (practitioner) who dispensed the drug may collect from the injured employee the cost of the prescription drug dispensed. This bill creates a procedure for resolving disputes between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee.

Specifically, the bill requires an employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee to provide reasonable notice to the pharmacist or practitioner that the charge is being disputed. After receiving that notice, the pharmacist or practitioner may not collect the cost of the prescription drug from the injured employee and must file the dispute with DWD within six months after

receiving the notice. The bill requires DWD to deny payment of a prescription drug charge that DWD determines to be unreasonable and specifies that the parties to a dispute over the reasonableness of a prescription drug charge are bound by DWD's determination unless the determination is set aside on judicial review.

Similarly, the bill also permits DWD to determine the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee in all of the following situations:

1. When confirming a compromise or stipulation in which an insurer or self-insured employer concedes liability for the cost of the prescription drug, but disputes the reasonableness of the amount charged for the prescription drug.

2. When finding after hearing that an insurer or self-insured employer is liable for the cost of the prescription drug, but that the reasonableness of the amount charged for the prescription drug is in dispute.

Christian Science treatment. Under current law, an employer is liable for providing Christian Science treatment, in lieu of medical treatment, as may be reasonably required to cure and relieve an injured employee who elects that treatment from the effects of an injury growing out of and incidental to employment, unless the employer files a written notice with DWD electing not to be liable for providing that treatment. This bill eliminates the right of an employer to elect not to be liable for providing Christian Science treatment at the option of an injured employee. The bill also provides that the liability of an employer for the cost of Christian Science treatment for an injured employee is limited to the usual and customary charge for that treatment.

MAXIMUM COMPENSATION AMOUNTS

Maximum weekly compensation for permanent partial disability. Under current law, permanent partial disability benefits are subject to maximum weekly compensation rates specified by statute. Currently, the maximum weekly compensation rate for permanent partial disability is $262. This bill increases that maximum weekly compensation rate to $272 for injuries occurring before January 1, 2009, and to $282 for injuries occurring on or after that date.

Supplemental benefits. Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 1987, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $338. This bill makes an employee who is injured prior to January 1, 1993, eligible for those supplemental benefits beginning on the effective date of the bill. The bill also increases the maximum supplemental benefit amount for a week of disability occurring after the effective date of the bill to an amount that, when added to the employee's regular benefits, equals $450.

WORK INJURY SUPPLEMENTAL BENEFIT FUND

Traumatic injuries. Under current law, an application for compensation that is not filed within 12 years from the date of the injury or from the date that compensation, other than treatment expenses, was last paid, whichever is later, is barred by the statute of limitations, except that in cases of occupational disease or

in cases of traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to, that is, toward the trunk from, the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement (traumatic injury) there is no statute of limitations.

In cases in which there is no statute of limitations, benefits or treatment expenses for an occupational disease becoming due 12 years after the date of the injury or after the date that compensation was last paid, whichever is later, are paid not by the employer or insurer, but rather by DWD from the work injury supplemental benefit (WISB) fund, which is a fund that is used to pay compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy, and benefits or treatment expenses for a traumatic injury becoming due 12 years after that date are paid by the employer or insurer.

This bill ~~eliminates current law exempting traumatic injuries from the statute~~ of limitations and provides instead that there is no statute of limitations for a claim for worker's compensation for the expense of repair, replacement, or other treatment relating to an artificial member that is first supplied within 12 years after the date of a traumatic injury or last payment of compensation for a traumatic injury, ~~whichever is later. Under the bill,~~ benefits or treatment expenses for a traumatic injury becoming due 12 years after ~~that date~~, other than ~~expenses~~ relating to an artificial member that is first supplied within 12 years after that date, are paid by DWD from the WISB fund and expenses becoming due 12 years after that date relating to an artificial member that is first supplied within 12 years after that date are paid by the employer or insurer.

Illegally employed minors. Current law requires an employer to pay into the state treasury for deposit in the WISB fund $20,000 when an injury results in death or in the loss of or total impairment of a hand, arm, foot, leg, or eye (death or disability payments), up to $7,500 when a minor is injured while working without a work permit, and up to $15,000 when a minor is injured while working at employment that is prohibited to the minor (illegally employed minor payments). Currently, the Department of Justice (DOJ) is required to represent the interests of the state in proceedings for death or disability payments, but not in proceedings for illegally employed minor payments. This bill requires DOJ to represent the interests of the state in proceedings for illegally employed minor payments.

Required fund balance. Under current law, if the balance in the WISB fund on June 30 of any fiscal year exceeds three times the amount paid out of that fund during that fiscal year, DWD must reduce the death or disability payments made into that fund so that the balance in the fund will remain at three times the amounts paid out of the fund in the preceding fiscal year. This bill eliminates that requirement.

PAYMENT OF BENEFITS

Interest credit. Under current law, if worker's compensation payments extend over a period of six months or more from the date of injury, or if payments are

for a death benefit, DWD may discharge a party from or compel a party to guarantee the payments in several ways. Two ways for a party to discharge or guarantee payments are by depositing the present value of the total unpaid compensation upon a 7 percent interest discount basis with a bank, credit union, savings and loan association, or trust company designated by DWD or by making payment in gross upon a 7 percent interest discount basis as approved by DWD. This bill lowers the required interest discount basis from 7 percent to 5 percent.

Under current law, DWD may direct an employer or insurer to pay unaccrued compensation for permanent disability or death benefits to an injured employee or the employee's dependents in advance if DWD determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, DWD must give the employer or insurer a 7 percent interest credit against its liability. This bill lowers the required interest credit from 7 percent to 5 percent.

Occupational deafness. Under current law, worker's compensation ~~is~~ payable for occupational deafness, which is defined as permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. Under current DWD rules, an employee must have a hearing loss of more than 30 decibels to receive permanent partial disability ~~payments for~~ occupational deafness. This bill provides that an employer is not liable for the expense of any examination or test for hearing loss, any evaluation of such an examination or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effects of hearing loss unless it is determined that worker's compensation for occupational deafness is payable.

UNINSURED EMPLOYERS FUND

Adequacy of fund balance. Under current law, if an employer is not insured or self-insured as required by the worker's compensation law, the employer is liable to DWD for certain payments that are deposited in an uninsured employers fund. DWD uses the uninsured employers fund to administer the laws relating to uninsured employers and to pay to the injured employees of uninsured employers benefits that are equal to the worker's compensation owed by the uninsured employers. Currently, if the secretary of workforce development determines that expected losses on known claims and on incurred, but not reported, claims, exceed 85 percent of the cash balance in the uninsured employers fund, that secretary must file a certificate with the secretary of administration attesting that the cash balance is likely to be inadequate to fund all claims against the fund and specifying a date after which no new claims will be paid.

This bill eliminates the requirement that the secretary of workforce development consider incurred, but not reported, claims in determining whether expected losses on claims exceed 85 percent of the cash balance in the uninsured employers fund and, therefore, whether that cash balance is likely to be inadequate to fund all claims against that fund. Accordingly, under the bill, the secretary of workforce development is required to consider only expected losses on known claims in determining whether the cash balance in the uninsured employers fund is likely to be inadequate to fund all claims against that fund.

Collection of payments owed. Current law provides two procedures by which DWD may collect payments owed to DWD by an uninsured employer. Under the first procedure, if an uninsured employer fails to pay an amount owed to DWD and no proceeding for review is pending, DWD may issue a warrant to the clerk of circuit court of any county in the state and the clerk of circuit court dockets the warrant, which gives the warrant the effect of a final judgment constituting a perfected lien on the uninsured employer's real and personal property located in the county where the warrant is entered. Currently, a lien created by a judgment is effective for ten years after the date of entry of the judgment. Under the second procedure, if no proceeding for review is pending, DWD may levy on any personal property of the uninsured employer, after demanding payment and giving ten days' notice of its intent to pursue legal action to collect the debt. This bill specifies that a lien for payments owed by an uninsured employer is effective when DWD issues the warrant and provides that the lien continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

Under current law, if DWD cannot collect a payment owed from an uninsured employer that is a corporation or limited liability company, then any officer, director, member, or manager of the uninsured employer may be held personally liable for that payment. This bill provides that the personal liability of those individuals is an independent obligation, applies to those individuals the procedures under current law by which DWD may collect payments owed by an uninsured employer, and specifies that a lien on the real and personal property of an individual who is personally liable for an amount owed by an uninsured employer continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

PROGRAM ADMINISTRATION

Necessity of treatment standards. Under current law, DWD is required to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee, which standards must be applied by experts in rendering opinions as to necessity of treatment and by DWD in determining necessity of treatment when there is a dispute between a health care provider and an insurer or self-insured employer over necessity of treatment. Current law requires those rules, to the greatest extent practicable, to be consistent with certain Minnesota rules, as amended to January 1, 2006. This bill eliminates the requirement that the rules establishing necessity of treatment standards be consistent with those Minnesota rules.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.01 (2) (f) of the statutes is amended to read:

102.01 **(2)** (f) "Temporary help agency" means an employer ~~who places its employee~~ that is primarily engaged in the business of placing its employees with or ~~leases~~ leasing its employees to another employer ~~who~~ that controls the ~~employee's~~ work activities of an employee placed with or licensed to the employer and compensates the first employer for the employee's services, regardless of the duration of the services.

SECTION 2. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 **(1)** (intro.) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than $30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than $30 and, for permanent partial disability for injuries occurring on or after ~~April 1, 2006, and before January 1, 2007, not more than $378, resulting in a maximum compensation rate of $252, and, for permanent partial disability for injuries occurring on or after January 1, 2007, not more than $393, resulting in a maximum compensation rate of $262~~ the effective date of this subsection .... [revisor inserts date], and before January 1, 2009, not more than $408, resulting in a maximum compensation rate of $272, and, for permanent partial disability for injuries occurring on or after January 1, 2009, not more than $423, resulting in a maximum compensation rate of $282. Between such limits the average weekly earnings shall be determined as follows:

SECTION 3. 102.12 of the statutes is amended to read:

102.12 Notice of injury, exception, laches. No claim for compensation may be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employee knew or ought to have known the nature of his or her disability and its relation to the employment, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior is sufficient. Absence of notice does not bar recovery if it is found that the employer was not misled ~~thereby~~ by that absence. Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and no application is filed with the department within 2 years ~~from~~ after the date of the injury or death, or ~~from~~ after the date on which the employee or his or her dependent knew or ought to have known of the nature of the disability and its relation to the employment, the right to compensation ~~therefor~~ is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the department's own motion has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4) (a).

SECTION 4. 102.16 (1) of the statutes is amended to read:

102.16 **(1)** Any controversy concerning compensation or a violation of sub. (3), including controversies in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified, or confirmed by the department within one year ~~from~~ after the date on which the

compromise is filed with the department~~,~~ or ~~from~~ within one year after the date on which an award has been entered~~,~~ based ~~thereon~~ on the compromise, or the department may take that action upon application made within ~~one year~~ that one-year period. Unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be ~~deemed~~ considered a compromise, and further claim is not barred except as provided in s. 102.17 (4) (a) regardless of whether an award is made. The employer, insurer, or dependent under s. 102.51 (5) shall have equal rights with the employee to have review of a compromise or any other stipulation of settlement. Upon petition filed with the department, the department may set aside the award or otherwise determine the rights of the parties.

SECTION 5. 102.16 (1m) (a) of the statutes is amended to read:

102.16 **(1m)** (a) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but disputes the reasonableness of the fee charged by the health service provider, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the department determines under this paragraph to be unreasonable. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this paragraph are bound by the department's determination under this paragraph on the reasonableness of the disputed fee, unless that determination is set aside ~~or modified by the department under sub. (1)~~ reversed or modified by the department under sub. (2) (f) or is set aside on judicial review as provided in sub. (2) (f).

SECTION 6. 102.16 (1m) (b) of the statutes is amended to read:

102.16 **(1m)** (b) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any treatment provided to an injured employee by a health service provider, but disputes the necessity of the treatment, the department may include in its order confirming the compromise or stipulation a determination as to the necessity of the treatment or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply the~~ Before determining under this paragraph the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this paragraph and by the department in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall deny payment for any treatment that the department determines under this paragraph to be unnecessary. A health service provider and an insurer or self-insured employer that are parties to a dispute under this paragraph over the necessity of treatment are bound by the department's determination under this paragraph ~~on~~ the necessity of the disputed treatment, unless that determination is set aside, ~~or modified~~ reversed by the department under sub. (2m) (e) or is set aside on judicial review as provided in sub. (2m) (e).

SECTION 7. 102.16 (1m) (c) of the statutes is created to read:

so 102.425 (4m)(e) or is set aside on judicial review as provided in s. 102.425 (4m)(e)

102.16 **(1m)** (c) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but disputes the reasonableness of the amount charged for the prescription drug, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the prescription drug charge or the department may notify, or direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute. The department shall deny payment of a prescription drug charge that the department determines under this paragraph to be unreasonable. A pharmacist or practitioner and an insurer or self-insured employer that are parties to a dispute under this paragraph over the reasonableness of a prescription drug charge are bound by the department's determination under this paragraph on the reasonableness of the disputed prescription drug charge, unless that determination is set aside (reversed) or modified by the department under sub. (1).

SECTION 8. 102.16 (2) (a) of the statutes is amended to read:

102.16 **(2)** (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the reasonableness of a fee charged by the health service provider for health services provided to an injured employee who claims benefits under this chapter. A health service provider may not submit a fee dispute to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or

a combination of charges for one or more days of service, is less than $25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any fee dispute to the department, regardless of the amount in controversy. The department shall deny payment of a health service fee that the department determines under this subsection~~, sub. (1m) (a), or s. 102.18 (1) (b)~~ to be unreasonable.

SECTION 9. 102.16 (2) (am) of the statutes is amended to read:

102.16 **(2)** (am) A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this subsection are bound by the department's determination under this subsection on the reasonableness of the disputed fee, unless that determination is set aside on judicial review as provided in par. (f). ~~A health service provider and an insurer or self-insured employer that are parties to a fee dispute under sub. (1m) (a) are bound by the department's determination under sub. (1m) (a) on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a fee dispute under s. 102.17 and a health service provider are bound by the department's determination under s. 102.18 (1) (b) on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

SECTION 10. 102.16 (2m) (a) of the statutes is amended to read:

102.16 **(2m)** (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, sub. (1m) (b), and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the necessity of treatment provided for an injured employee who claims benefits under

this chapter. A health service provider may not submit a dispute over necessity of treatment to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than $25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment for any treatment that the department determines under this subsection~~, sub. (1m) (b), or s. 102.18 (1) (b)~~ to be unnecessary.

SECTION 11. 102.16 (2m) (am) of the statutes is amended to read:

102.16 **(2m)** (am) A health service provider and an insurer or self-insured employer that are parties to a dispute under this subsection over the necessity of treatment are bound by the department's determination under this subsection on the necessity of ~~that~~ the disputed treatment, unless that determination is set aside on judicial review as provided in par. (e). ~~A health service provider and an insurer or self-insured employer that are parties to a dispute under sub. (1m) (b) over the necessity of treatment are bound by the department's determination under sub. (1m) (b) on the necessity of that treatment, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a dispute under s. 102.17 over the necessity of treatment and a health service provider are bound by the department's determination under s. 102.18 (1) (b) on the necessity of that treatment, unless that determination is set aside, reversed or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

SECTION 12. 102.16 (2m) (c) of the statutes is amended to read:

102.16 **(2m)** (c) Before determining under this subsection the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. ~~Before determining under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department may, but is not required to, obtain such an expert opinion.~~ To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The standards promulgated under par. (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this paragraph and by the department in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer or self-insured employer present clear and convincing written evidence that the expert's opinion is in error.

SECTION 13. 102.16 (2m) (g) of the statutes is amended to read:

102.16 **(2m)** (g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an

injured employee. ~~The rules establishing those standards shall, to the greatest extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as amended to January 1, 2006.~~ Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation on amending those rules.

SECTION 14. 102.16 (3) of the statutes is amended to read:

102.16 **(3)** No employer subject to this chapter may solicit, receive, or collect any money from an employee or any other person or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under this chapter or recovering premiums paid on a contract described under s. 102.31 (1) (a) or a policy described under s. 102.315 (3), (4), or (5) (a); nor may any ~~such~~ employer subject to this chapter sell to an employee or other person, or solicit or require the employee or other person to purchase, medical, chiropractic, podiatric, psychological, dental, or hospital tickets or contracts for medical, surgical, hospital, or other health care treatment ~~which~~ that is required to be furnished by that employer.

SECTION 15. 102.17 (4) of the statutes is renumbered 102.17 (4) (a) and amended to read:

102.17 **(4)** (a) Except as provided in ~~this subsection~~ par. (b), the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years ~~from~~ after the date of the injury or death or ~~from~~ after the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. Payment of wages by the employer during disability or

absence from work to obtain treatment shall be considered payment of compensation for the purpose of this subsection if the employer knew of the employee's condition and its alleged relation to the employment.

(b) In the case of occupational disease~~, a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement~~ or a claim for compensation for the expense of repair, replacement, or other treatment relating to an artificial member that is first supplied within 12 years after the date of a traumatic injury or last payment of compensation~~, as described in par. (a), for a traumatic injury, whichever date is latest~~, there shall be no statute of limitations~~,~~ ~~except that benefits~~ and benefits or treatment expenses shall be paid as provided in pars. (c) and (d).

(c) Benefits or treatment expense for an occupational disease or traumatic injury becoming due ~~after~~ 12 years ~~from~~ after the date of injury or death or last payment of compensation, as described in par. (a), whichever date is latest, other than the expense of repair, replacement, or other treatment relating to an artificial member ~~described in par. (b)~~ shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66 ~~and benefits or treatment expense for a traumatic injury.~~

(d) Expenses becoming due ~~after~~ 12 years ~~from that date~~ after the date of a traumatic injury or last payment of compensation, as described in par. (a), whichever date is latest, for the repair, replacement, or other treatment relating to an artificial member described in par. (b) shall be paid by the employer or insurer. ~~Payment of~~

~~wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment.~~

SECTION 16. 102.18 (1) (bg) 1. of the statutes is amended to read:

102.18 **(1)** (bg) 1. If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the department determines under this subdivision to be unreasonable. An insurer or self-insured employer and a health service provider that are parties to a fee dispute under this subdivision are bound by the department's determination under this subdivision on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under ~~sub. (3) or by the commission under sub. (3) or (4)~~ or is set aside on judicial review under s. 102.23.

SECTION 17. 102.18 (1) (bg) 2. of the statutes is amended to read:

102.18 **(1)** (bg) 2. If the department finds under par. (b) that an employer or insurance carrier is liable under this chapter for any treatment provided to an injured employee by a health service provider, but that the necessity of the treatment is in dispute, the department may include in its order under par. (b) a determination as to the necessity of the treatment or the department may notify, or direct the

employer or insurance carrier to notify, the health service provider under s. 102.16 (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply the~~ Before determining under this subdivision the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in s. 102.16 (2m) (c). The standards promulgated under s. 102.16 (2m) (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this subdivision and by the department in determining necessity of treatment under this ~~paragraph~~ subdivision. In cases in which no standards promulgated under s. 102.16 (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall deny payment for any treatment that the department determines under this subdivision to be unnecessary. An insurer or self-insured employer and a health service provider that are parties to a dispute under this subdivision over the necessity of treatment are bound by the department's determination under this subdivision on the necessity of the disputed treatment, unless that determination is set aside, reversed, or modified by the department under ~~sub. (3)~~ or ~~by the commission under sub. (3) or (4)~~ or is set aside on judicial review ~~under s. 102.23~~.

as provided in s. 102.16 (2m)(e)

s. 102.16 (2m)(e)

SECTION 18. 102.18 (1) (bg) 3. of the statutes is created to read:

102.18 **(1)** (bg) 3. If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that the reasonableness of the amount charged for that prescription drug is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the prescription drug charge or the department may notify, or

direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute. The department shall deny payment of a prescription drug charge that the department determines under this subdivision to be unreasonable. An insurer or self-insured employer and a pharmacist or practitioner that are parties to a dispute under this subdivision over the reasonableness of a prescription drug charge are bound by the department's determination under par. (b) on the reasonableness of the disputed prescription drug charge, unless that determination is set aside, reversed, or modified by the department under ~~sub. (3) or by the commission under sub. (3) or (4)~~ or is set aside on judicial review ~~under s. 102.23.~~ as provided in s. 102.425 (4m) (e)

SECTION 19. 102.18 (6) of the statutes is amended to read:

102.18 **(6)** In case of disease arising out of the employment, the department may from time to time review its findings, order, or award, and make new findings, order, or award, based on the facts regarding disability or otherwise as ~~they~~ those facts may then appear. This subsection ~~shall~~ does not affect the application of the limitation in s. 102.17 (4) (a).

SECTION 20. 102.29 (6) of the statutes is renumbered 102.29 (6) (a) and amended to read:

102.29 **(6)** (a) No employee of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any employer ~~who~~ that compensates the temporary help agency for the employee's services, against any other temporary help agency that is compensated by that employer for another employee's services, or against any employee of that compensating employer or of that other temporary help agency, unless the employee who makes a claim for

compensation would have a right under s. 102.03 (2) to bring an action against the employee of the compensating employer or the employee of the other temporary help agency if the employees were coemployees.

SECTION 21. 102.29 (6) (b) of the statutes is created to read:

102.29 **(6)** (b) No employee of an employer that compensates a temporary help agency for another employee's services who makes a claim for compensation may make a claim or maintain an action in tort against the temporary help agency or against any employee of the temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

SECTION 22. 102.29 (6m) of the statutes is created to read:

102.29 **(6m)** (a) No leased employee, as defined in s. 102.315 (1) (g), who makes a claim for compensation may make a claim or maintain an action in tort against the client, as defined in s. 102.315 (1) (b), that accepted the services of the leased employee, against any other employee leasing company, as defined in s. 102.315 (1) (f), that provides the services of another leased employee to the client, or against any employee of the client of or that other employee leasing company, unless the leased employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client or the leased employee of the other employee leasing company if the employees or leased employees were coemployees.

(b) No employee of a client who makes a claim for compensation may make a claim or maintain an action in tort against an employee leasing company that provides the services of a leased employee to the client or against any leased

employee of the employee leasing company, unless the employee who makes a claim for compensation would have a right under s. 102.03 (2) to bring an action against the leased employee if the employee and the leased employee were coemployees

SECTION 23. 102.29 (7) of the statutes is amended to read:

102.29 **(7)** No employee who is loaned by his or her employer to another employer and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee's services or against any employee of that employer, unless the loaned employee would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the loaned employee and the employee were coemployees.

SECTION 24. 102.29 (8) of the statutes is amended to read:

102.29 **(8)** No student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose or against any employee of that employer, unless the student would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the student and the employee were coemployees.

SECTION 25. 102.29 (8m) of the statutes is amended to read:

102.29 **(8m)** No participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is provided worker's compensation coverage by a Wisconsin works agency, as defined under s. 49.001 (9), and who makes a claim for compensation under this chapter may

make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose or against any employee of that employer, unless the participant would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the participant and the employee were coemployees.

SECTION 26. 102.29 (8r) of the statutes is amended to read:

102.29 **(8r)** No participant in a food stamp employment and training program under s. ~~49.13~~ 49.79 (9) who, under s. 49.13 (2) (d) 49.79 (9) (a) 5., is provided worker's compensation coverage by the department of health and family services or by a Wisconsin works agency, as defined in s. 49.001 (9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the employment and training from which the claim arose or against any employee of that employer, unless the participant would have a right under s. 102.03 (2) to bring an action against the employee of that employer if the participant and the employee were coemployees.

SECTION 27. 102.29 (10) of the statutes is amended to read:

102.29 **(10)** No behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, under s. 250.042 (4) (b), is considered to be an employee of the state for purposes of worker's compensation coverage while providing volunteer, unpaid behavioral health services, health care services, pupil services, or substance abuse prevention services on behalf of a health care facility during a state of emergency and who makes a claim for compensation under this chapter may make a claim or bring an action in tort against the health care facility that accepted those services or against any employee of the health care facility, unless the provider would have a right under s. 102.03 (2) to bring an action

Plain: or other provider under contract with the department of health and family services or a county department under s. 46.215, 46.22, or 46.23 or tribal governing body to administer the food stamp employment and training program

as affected by 2007 Wisconsin Act 20;

LRS: Please proof w/Act 20.

against the employee of the health care facility if the provider and the employee were coemployees.

SECTION 28. 102.31 (2m) of the statutes is repealed.

SECTION 29. 102.315 of the statutes is created to read:

102.315 Worker's compensation insurance; employee leasing companies. (1) DEFINITIONS. In this section:

(a) "Bureau" means the Wisconsin compensation rating bureau under s. 626.06.

with an employee leasing company

(b) "Client" means a person that obtains all or part of its nontemporary, ongoing employee workforce through an employee leasing agreement.

(c) "Divided workforce" means a workforce in which some of the employees of a client are leased employees and some of the employees of the client are not leased employees.

(d) "Divided workforce plan" means a plan under which 2 worker's compensation insurance policies are issued to cover the employees of a client that has a divided workforce, one policy covering the leased employees of the client and one policy covering the employees of the client who are not leased employees.

(e) "Employee leasing agreement" means a written contract between an employee leasing company and a client under which the employee leasing company provides all or part of the nontemporary, ongoing employee workforce of the client.

(f) "Employee leasing company" means a person that contracts to provide the nontemporary, ongoing employee workforce of a client under a written agreement, regardless of whether the person uses the term "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," or "employee leasing company," or uses any other, similar name, as part of the person's

NOTE: This definition applies only for the purposes of this chapter and does not apply to the use of the term in any other chapter.

business name or to describe the person's business. "Employee leasing company" does not include a cooperative educational service agency.

(g) "Leased employee" means a nontemporary, ongoing employee whose services are obtained by a client under an employee leasing agreement.

(h) "Master policy" means a single worker's compensation insurance policy issued by an insurer authorized to do business in this state to an employee leasing company in the name of the employee leasing company that covers more than one client of the employee leasing company.

(i) "Multiple coordinated policy" means a contract of insurance for worker's compensation under which an insurer authorized to do business in this state issues separate worker's compensation insurance policies to an employee leasing company for each client of the employee leasing company that is insured under the contract.

(j) "Small client" means a client that has an unmodified annual premium assignable to its business, including the business of all entities or organizations that are under common control or ownership with the client, that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria under ss. 626.11 and 626.12, without regard to whether the client has a divided workforce.

(2) EMPLOYEE LEASING COMPANY LIABLE. ~~An employee leasing company is the employer of a leased employee whom the employee leasing company has placed with a client under an employee leasing agreement.~~ An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another

employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

(3) MULTIPLE COORDINATED POLICY REQUIRED. Except as provided in subs. (4) and (5) (a), an employee leasing company shall insure its liability under sub. (2) by obtaining a separate worker's compensation insurance policy for each client of the employee leasing company under a multiple coordinated policy. The policy shall name both the employee leasing company and the client as named insureds, shall indicate which named insured is the employee leasing company and which is the client, shall designate either the employee leasing company or the client, but not both, as the first named insured, and shall provide the mailing address of each named insured. Except as permitted under sub. (6), an insurer may issue a policy for a client under this subsection only if all of the employees of the client are leased employees and are covered under the policy.

(4) MASTER POLICY; APPROVAL REQUIRED. An employee leasing company may insure its liability under sub. (2) by obtaining a master policy that has been approved by the commissioner of insurance as provided in this subsection. The commissioner of insurance may approve the issuance of a master policy if the insurer proposing to issue the master policy submits a filing to the bureau showing that the insurer has the technological capacity and operation capability to provide to the bureau information, including unit statistical data, information concerning proof of coverage and cancellation, termination, and nonrenewal of coverage, and any other information that the bureau may require, at the client level and in a format required by the bureau and the bureau submits the filing to the commissioner of insurance for approval under s. 626.13. A master policy filing under this subsection shall also

establish basic manual rules governing the insurance of a divided workforce that are consistent with sub. (6) and the cancellation, termination, and nonrenewal of policies that are consistent with sub. (10). On approval by the commissioner of insurance of a master policy filing, an insurer may issue a master policy to an employee leasing company insuring the liability of the employee leasing company under sub. (2).

(5) MASTER POLICY; SMALL CLIENTS. (a) Regardless of whether a master policy has been approved under sub. (4), an employee leasing company may insure its liability under sub. (2) with respect to a group of small clients of the employee leasing company by obtaining a master policy in the voluntary market insuring that liability. The fact that an employee leasing company has a small client that is covered under a mandatory risk-sharing plan under s. 619.01 does not preclude the employee leasing company from obtaining a master policy under this paragraph so long as that small client is not covered under the master policy. An insurer may issue a master policy under this paragraph insuring in the voluntary market the liability under sub. (2) of an employee leasing company with respect to a group of small clients of the employee leasing company regardless of whether any of those small clients has a divided workforce.

(b) Within 30 days after the effective date of an employee leasing agreement with a small client that is covered under a master policy under par. (a), the employee leasing company shall report to the department all of the following information:

1. The name and address of the small client and of each entity or organization that is under common control or ownership with the small client.

2. The number of employees initially covered under the master policy.

3. The estimated unmodified annual premium assignable to the small client's business, including the business of all entities or organizations that are under

common control or ownership with the small client, without regard to whether the small client has a divided workforce, which information the small client shall report to the employee leasing company.

4. The effective date of the employee leasing agreement.

(c) Within 30 days after the effective date of coverage of a small client under a master policy under par. (a), the insurer or, if authorized by the insurer, the employee leasing company shall file proof of that coverage with the department. Coverage of a small client under a master policy becomes binding when the insurer or employee leasing company files proof of that coverage under this paragraph or provides notice of coverage to the small client, whichever occurs first. Nothing in this paragraph requires an employee leasing company or an employee of an employee leasing company to be licensed as an insurance intermediary under ch. 628.

(d) If at any time the unmodified annual premium assignable to the business of a small client that is covered under a master policy under par. (a), including the business of all entities or organizations that are under common control or ownership with the small client, without regard to whether the small client has a divided workforce, exceeds the threshold below which employers are not experience rated under the standards and criteria under ss. 626.11 and 626.12, the employee leasing company shall notify the insurer and obtain coverage for the small client under sub. (3) or (4).

(6) DIVIDED WORKFORCE. (a) If a client notifies the department as provided under par. (b) of its intent to have a divided workforce and the department specifically consents by written order to a divided workforce plan, an insurer may issue a worker's compensation insurance policy covering only the leased employees of the client. An insurer that issues a policy covering only the leased employees of

a client is not liable under s. 102.03 for any compensation payable under this chapter to an employee of the client who is not a leased employee unless the insurer also issues a policy covering that employee. A client that has a divided workforce shall insure its employees who are not leased employees in the voluntary market and may not insure those employees under the mandatory risk-sharing plan under s. 619.01 unless the leased employees of the client are covered under that plan.

(b) A client that intends to have a divided workforce shall notify the department of that intent on a form prescribed by the department that includes all of the following:

1. The names and mailing addresses of the client and the employee leasing company, the effective date of the employee leasing agreement, a description of the employees of the client who are not leased employees, and such other information as the department may require.

2. Except as provided in par. (c), evidence that the employees of the client who are not leased employees are covered in the voluntary market. That evidence shall be in the form of a copy of the information page or declaration page of a worker's compensation insurance policy or binder evidencing placement of coverage in the voluntary market covering those employees.

3. An agreement by the client to assume full responsibility to immediately pay all compensation and other payments payable under this chapter as may be required by the department should a dispute arise between 2 or more insurers as to liability under this chapter for an injury sustained while a divided workforce plan is in effect, pending final resolution of that dispute. This subdivision does not preclude a client from insuring that responsibility in an insurer authorized to do business in this state.

(c) If the leased employees of a client are covered under a mandatory risk-sharing plan under s. 619.01, the client may, instead of providing the evidence required under par. (b) 2., provide evidence in its notification under par. (b) that both the leased employees of the client and the employees of the client who are not leased employees are covered under that mandatory risk-sharing plan. That evidence shall be in the form of a copy of the information page or declaration page of a worker's compensation insurance policy or binder evidencing placement of coverage under the mandatory risk-sharing plan covering both those leased employees and employees who are not leased employees.

(d) When the department receives a notification under par. (b), the department shall immediately provide a copy of the notification to the bureau.

(e) 1. If a client intends to terminate a divided workforce plan, the client shall notify the department of that intent on a form prescribed by the department. Termination of a divided workforce plan by a client is not effective until 10 days after notice of the termination is received by the department.

2. If an insurer cancels, terminates, or does not renew a worker's compensation insurance policy issued under a divided workforce plan that covers in the voluntary market the employees of a client who are not leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy, unless the client submits evidence under par. (c) that both the leased employees of the client and the employees of the client who are not leased employees are covered under a mandatory risk-sharing plan.

3. If an insurer cancels, terminates, or does not renew a worker's compensation insurance policy issued under a divided workforce plan that covers under the mandatory risk-sharing plan under s. 619.01 the employees of a client who are not

leased employees, the divided workforce plan is terminated on the effective date of the cancellation, termination, or nonrenewal of the policy.

(7) FILING OF CONTRACTS. An insurer that provides a policy under sub. (3), (4), or (5) (a) shall file the policy as provided in s. 626.35.

(8) COVERAGE OF CERTAIN EMPLOYEES. (a) A sole proprietor, a partner, or a member of a limited liability company is not eligible for worker's compensation benefits under a policy issued under sub. (3), (4), or (5) (a) unless the sole proprietor, partner, or member elects coverage under s. 102.075 by an endorsement on the policy naming the sole proprietor, partner, or member who has so elected.

(b) An officer of a corporation is eligible for worker's compensation benefits under a policy issued under sub. (3), (4), or (5) (a), unless the officer elects under s. 102.076 not to be covered under the policy by an endorsement on the policy naming the officer who has so elected.

(c) An employee leasing company shall obtain a worker's compensation insurance policy that is separate from a policy covering the employees whom it leases to its clients to cover the employees of the employee leasing company who are not leased employees.

(9) PREMIUMS. (a) An insurer that issues a policy under sub. (3), (4), or (5) (a) may charge a premium for coverage under that policy that complies with the applicable classifications, rules, rates, and rating plans filed with and approved by the commissioner of insurance under s. 626.13.

(b) For a policy issued under sub. (3) in which an employee leasing company is the first named insured or for a master policy issued under sub. (4) or (5) (a), an insurer may obligate only the employee leasing company to pay premiums due for

a client's coverage under the policy and may not recover any unpaid premiums due for that coverage from the client.

(c) For a policy issued under sub. (3) in which a client is the first named insured and for which premium payments are coordinated under an employee leasing agreement, an insurer may obligate only the employee leasing company to pay premiums due for the client's coverage under the policy and may not recover any unpaid premiums due for that coverage from the client.

(d) This subsection does not prohibit an insurer from doing any of the following:

1. Collecting premiums or other charges due with respect to a client by means of list billing through an employee leasing company.

2. Requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of a premium.

3. Issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company.

4. Grouping together the clients of an employee leasing company for the purpose of offering dividend eligibility and paying dividends to those clients in compliance with s. 631.51.

5. Applying a discount to the premium charged with respect to a client as permitted by the bureau.

6. Applying a retrospective rating option for determining the premium charged with respect to a client. No insurer or employee leasing company may impose on, allocate to, or collect from a client a penalty under a retrospective rating option arrangement. This subdivision does not prohibit an insurer from requiring an employee leasing company to pay a penalty under a retrospective rating option arrangement with respect to a client of the employee leasing company.

NO ¶ IF a policy is cancelled under this subdivision, the insurer may require appropriate proof of the cancellation.

(10) CANCELLATION, TERMINATION, AND NONRENEWAL OF POLICIES. (a) 1. A policy issued under sub. (3) in which the employee leasing company is the first named insured and a policy issued under sub. (4) or (5) (a) may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.

2. The insureds under a policy described in subd. 1. may cancel the policy during the policy period if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client or by the client agreeing to the cancellation in writing, ~~and notice of the cancellation is provided to the insurer as required under s. 102.31 (2) (a).~~

3. Subject to subd. 4., an insurer may cancel, terminate, or nonrenew a policy described in subd. 1. by providing written notice of the cancellation, termination, or nonrenewal to the insured employee leasing company and to the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. The insurer is not required to state in the notice to the insured client the facts on which the decision to cancel, terminate, or nonrenew the policy is based. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision for any reason other than nonrenewal is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department. Except as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not effective until 60 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

4. If an employee leasing company terminates an employee leasing agreement with a client in its entirety, an insurer may cancel or terminate a policy described in subd. 1. covering that client during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company and the department as required under s. 102.31 (2) (a) and by providing that notice to the insured client. The insurer shall state in the notice to the insured client that the policy is being cancelled or terminated due to the termination of the employee leasing agreement. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

(b) 1. A policy issued under sub. (3) in which the client is the first named insured may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.

2. The insureds under a policy described in subd. 1. may cancel the policy during the policy period if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client or by the client agreeing to the cancellation in writing, ~~and notice of the cancellation is provided to the insurer as required under s. 102.31 (2) (a).~~

3. An insurer may cancel, terminate, or nonrenew a policy described in subd. 1., including cancellation or termination of a policy providing continued coverage under subd. 4. ~~during the policy period for failure of the client to pay a premium due or on grounds stated in the policy,~~ by providing written notice of the cancellation, termination, or nonrenewal to the insured employee leasing company and to the department as required under s. 102.31 (2) (a) and by providing that notice to the

insured client. Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under this subdivision for any reason other than nonrenewal is not effective until 30 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department. Except as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not effective until 60 days after the insurer has provided written notice of the cancellation or termination to the insured employee leasing company, the insured client, and the department.

4. If an employee leasing agreement is terminated during the policy period of a policy described in subd. 1., an insurer shall cancel the employee leasing company's coverage under the policy by an endorsement to the policy and coverage of the client under the policy shall continue as to all employees of the client unless the policy is cancelled or terminated as permitted under subd. 3.

SECTION 30. 102.32 (intro.) of the statutes is renumbered 102.32 (1m) (intro.) and amended to read:

102.32 **(1m)** (intro.) In any case in which compensation payments for an injury have extended or will extend over 6 months or more ~~from~~ after the date of the injury ~~(or at any time in death benefit cases)~~ or in any case in which death benefits are payable, any party in interest may, in the discretion of the department, be discharged from, or compelled to guarantee, future compensation payments ~~as follows~~ by doing any of the following:

SECTION 31. 102.32 (1) of the statutes is renumbered 102.32 (1m) (a) and amended to read:

102.32 **(1m)** (a) ~~By depositing~~ Depositing the present value of the total unpaid compensation upon a ~~7%~~ 5 percent interest discount basis with a credit union,

savings bank, savings and loan association, bank, or trust company designated by the department~~; or~~.

SECTION 32. 102.32 (2) of the statutes is renumbered 102.32 (1m) (b) and amended to read:

102.32 **(1m)** (b) ~~By purchasing~~ Purchasing an annuity, within the limitations provided by law, ~~in such~~ from an insurance company ~~granting annuities and~~ licensed in this state~~, as may be~~ that is designated by the department~~; or~~.

SECTION 33. 102.32 (3) of the statutes is renumbered 102.32 (1m) (c) and amended to read:

102.32 **(1m)** (c) ~~By making~~ Making payment in gross upon a ~~7%~~ 5 percent interest discount basis to be approved by the department~~; and~~.

SECTION 34. 102.32 (4) of the statutes is renumbered 102.32 (1m) (d) and amended to read:

102.32 **(1m)** (d) In cases ~~where~~ in which the time for making payments or the amounts ~~thereof~~ of payments cannot be definitely determined, ~~by~~ furnishing a bond, or other security, satisfactory to the department for the payment of compensation as may be due or become due. The acceptance of the bond, or other security, and the form and sufficiency ~~thereof~~ of the bond or other security, shall be subject to the approval of the department. If the employer or insurer is unable or fails to immediately procure the bond, then, in lieu ~~thereof~~ of procuring the bond, deposit shall be made with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department, of the maximum amount that may reasonably become payable in these cases, to be determined by the department at amounts consistent with the extent of the injuries and the law. The bonds and deposits are to be reduced only to satisfy claims and withdrawn only after the claims

which they are to guarantee are fully satisfied or liquidated under ~~sub. (1), (2) or (3);~~ ~~and~~ par. (a), (b), or (c).

SECTION 35. 102.32 (5) of the statutes is amended to read:

102.32 **(5)** Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of, the employer's liabilities in any case described in ~~this section~~ sub. (1m) and thereby release the employer from compensation liability in that case, but if for any reason a bond furnished or deposit made under sub. ~~(4)~~ (1m) (d) does not fully protect, the compensation insurer or insured employer, as the case may be, shall still be liable to the beneficiary of the bond or deposit.

SECTION 36. 102.32 (6m) of the statutes is amended to read:

102.32 **(6m)** The department may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, the department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at ~~7~~ 5 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year.

SECTION 37. 102.42 (1) of the statutes is amended to read:

102.42 **(1)** TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, ~~if the employer has not filed notice as provided in sub. (4),~~ Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as

may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies, and training. ~~Where~~ When the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

SECTION 38. 102.42 (4) of the statutes is amended to read:

102.42 **(4)** CHRISTIAN SCIENCE. ~~Any~~ The liability of an employer ~~may elect not to be subject to the provisions for~~ for the cost of Christian Science treatment provided ~~for in this section by filing written notice of such election with the department~~ to an injured employee is limited to the usual and customary charge for that treatment.

SECTION 39. 102.425 (3) (a) 1. of the statutes is amended to read:

102.425 **(3)** (a) 1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the ~~American Druggist Blue Book, published by Hearst Corporation, Inc. or its successor, or in the~~ Drug

Topics Red Book, published by Medical Economics Company, Inc. or its successor~~, whichever is less~~.

SECTION 40. 102.425 (4) (b) of the statutes is amended to read:

102.425 **(4)** (b) If an employer or insurer denies or disputes liability for the cost of a drug prescribed to an injured employee under sub. (2), the pharmacist or practitioner who dispensed the drug may collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed, subject to the limitations specified in sub. (3) (a). If an employer or insurer concedes liability for the cost of a drug prescribed to an injured employee under sub. (2), but disputes the reasonableness of the amount charged for the prescription drug, the employer or insurer shall provide reasonable notice under sub. (4m) (b) to the pharmacist or practitioner that the reasonableness of the amount charged is in dispute and the pharmacist or practitioner who dispensed the drug may not collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed after receiving that notice.

SECTION 41. 102.425 (4m) of the statutes is created to read:

102.425 **(4m)** RESOLUTION OF PRESCRIPTION DRUG CHARGE DISPUTES. (a) The department has jurisdiction under this subsection and s. 102.16 (1m) (c) and s. 102.17 to resolve a dispute between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee who claims benefits under this chapter.

(b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18

Within 60 days after a determination under this subsection, the department may set aside, reverse, or modify the determination on grounds of mistake.

(1) (bg) 3. shall provide reasonable notice to the pharmacist or practitioner that the charge is being disputed. After receiving reasonable notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 1. that a prescription drug charge is being disputed, a pharmacist or practitioner may not collect the disputed charge from, or bring an action for collection of the disputed charge against, the employee who received the prescription drug.

(c) A pharmacist or practitioner that receives notice under par. (b) that the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee is in dispute shall file the dispute with the department within 6 months after receiving that notice.

(d) The department shall deny payment of a prescription drug charge that the department determines under this subsection to be unreasonable. A pharmacist or practitioner and an employer or insurer that are parties to a dispute under this subsection over the reasonableness of a prescription drug charge are bound by the department's determination under this subsection on the reasonableness of the disputed charge, unless that determination is set aside on judicial review as provided in par. (e).

(e) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determination for any reason that the department considers sufficient. A pharmacist, practitioner, employer, or insurer that is aggrieved by a determination of the department under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

SECTION 42. 102.44 (1) (intro.) of the statutes is amended to read:

102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, ~~1987~~ ~~1992~~, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1989~~ ~~1994~~, and shall continue during the period of such total disability subsequent to that date.

SECTION 43. 102.44 (1) (a) of the statutes is amended to read:

102.44 **(1)** (a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after ~~January 1, 2007~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount which, when added to the regular benefit established for the case, shall equal ~~$338~~ $450.

SECTION 44. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~January 1, 2007~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$338~~ $450 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 45. 102.44 (6) (b) of the statutes is amended to read:

102.44 **(6)** (b) If, during the period set forth in s. 102.17 (4) (a) the employment relationship is terminated by the employer at the time of the injury, or by the employee because his or her physical or mental limitations prevent his or her continuing in ~~such~~ that employment, or if during ~~such~~ that period a wage loss of ~~15%~~ 15 percent or more occurs the department may reopen any award and make a redetermination taking into account loss of earning capacity.

SECTION 46. 102.555 (1) of the statutes is renumbered 102.555 (1) (intro.) and amended to read:

102.555 **(1)** (intro.) ~~"Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.~~ In this section:

(a) "Noise" means sound capable of producing occupational deafness.

(b) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

SECTION 47. 102.555 (1) (c) of the statutes is created to read:

102.555 **(1)** (c) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

SECTION 48. 102.555 (12) of the statutes is created to read:

102.555 **(12)** An employer is not liable for the expense of any examination or test for hearing loss, any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss unless it is determined that compensation for occupational deafness is payable under sub. (3) ~~or~~ (4).

SECTION 49. 102.64 (2) of the statutes is amended to read:

102.64 **(2)** Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in ~~such~~ those proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

described in 50 (2017 (4)(b)

SECTION 50. 102.65 (3) of the statutes is repealed.

SECTION 51. 102.66 (1) of the statutes is amended to read:

102.66 **(1)** In the event that there is an otherwise meritorious claim for occupational disease or for a traumatic injury, other than a claim for the expense of repair, replacement or other treatment relating to an artificial member described in s. 102.17 (4) ~~(b)~~ (c), and the claim is barred solely by the statute of limitations under s. 102.17 (4) (a), the department may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program

providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

SECTION 52. 102.66 (2) of the statutes is amended to read:

102.66 **(2)** In ~~the case of occupational disease~~ a case described in sub. (1), appropriate benefits may be awarded from the work injury supplemental benefit fund when the status or existence of the employer or its insurance carrier cannot be determined or when there is ~~otherwise no~~ adequate remedy, subject to the limitations contained in sub. (1).

SECTION 53. 102.80 (3) (ag) of the statutes is amended to read:

102.80 **(3)** (ag) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims ~~and on incurred, but not reported, claims~~ exceed ~~85%~~ of the cash balance in the uninsured employers fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer's fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.

SECTION 54. 102.83 (1) (a) 1. of the statutes is amended to read:

102.83 **(1)** (a) 1. If an uninsured employer or any individual who is found personally liable under sub. (8) fails to pay to the department any amount owed to

the department under s. 102.82 and no proceeding for review is pending, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

SECTION 55. 102.83 (1) (a) 2. of the statutes is amended to read:

102.83 **(1)** (a) 2. The clerk of circuit court shall enter in the judgment and lien docket the name of the uninsured employer or the individual mentioned in the warrant and the amount of the payments, interest, costs, and other fees for which the warrant is issued and the date when the warrant is entered.

SECTION 56. 102.83 (1) (a) 3. of the statutes is amended to read:

102.83 **(1)** (a) 3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien on the ~~uninsured employer's~~ right, title, and interest of the uninsured employer or the individual in all of ~~the uninsured employer's~~ that person's real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant under subd. 1. and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

SECTION 57. 102.83 (1) (a) 4. of the statutes is amended to read:

102.83 **(1)** (a) 4. After the warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the uninsured employer or the individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the uninsured employer or the individual to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay

to it the money collected by virtue of the warrant within 60 days after receipt of the warrant.

SECTION 58. 102.83 (1) (b) of the statutes is amended to read:

102.83 **(1)** (b) The clerk of circuit court shall accept and enter the warrant in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the uninsured employer or the individual when satisfaction or release is presented for entry.

SECTION 59. 102.83 (2) of the statutes is amended to read:

102.83 **(2)** The department may issue a warrant of like terms, force, and effect to any employee or other agent of the department, who may file a copy of the warrant with the clerk of circuit court of any county in the state, and thereupon the clerk of circuit court shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (1). In the execution of the warrant, the employee or other agent shall have all the powers conferred by law upon a sheriff, but may not collect from the uninsured employer or the individual any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

SECTION 60. 102.83 (3) of the statutes is amended to read:

102.83 **(3)** If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the amount due for payments, interest, costs, and

other fees as if the department had recovered judgment against the uninsured employer or the individual and an execution had been returned wholly or partially not satisfied.

SECTION 61. 102.83 (4) of the statutes is amended to read:

102.83 **(4)** When the payments, interest, costs, and other fees specified in a warrant have been paid to the department, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter the satisfaction of the judgment in the judgment and lien docket. The department shall send a copy of the satisfaction to the uninsured employer or the individual.

SECTION 62. 102.83 (8) of the statutes is amended to read:

102.83 **(8)** Any officer or director of an uninsured employer that is a corporation and any member or manager of an uninsured employer that is a limited liability company may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation or limited liability company, as provided in this section, the corporation or limited liability company is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation or of the members and managers of a limited liability company as provided in this subsection is an independent obligation, survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company, and shall be set forth in a determination or decision issued under s. 102.82.

SECTION 63. 102.835 (1) (ad) of the statutes is created to read:

102.835 **(1)** (ad) "Debtor" means an uninsured employer or an individual found personally liable under s. 102.83 (8) who owes the department a debt.

SECTION 64. 102.835 (2) of the statutes is amended to read:

102.835 **(2)** POWERS OF LEVY AND DISTRAINT. If any ~~uninsured employer~~ debtor who is liable for any debt fails to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the ~~uninsured employer~~ debtor. If the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the ~~uninsured employer~~ debtor until the debt and expenses of the levy are fully paid.

SECTION 65. 102.835 (4) (a) of the statutes is amended to read:

102.835 **(4)** (a) Any ~~uninsured employer~~ debtor who fails to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

SECTION 66. 102.835 (4) (c) of the statutes is amended to read:

102.835 **(4)** (c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the ~~uninsured employer~~ debtor with respect to the property or rights to the property arising from the surrender or payment to the department.

SECTION 67. 102.835 (5) (a) of the statutes is amended to read:

102.835 **(5)** (a) If the department has levied upon property, any person, other than the ~~uninsured employer~~ debtor who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property, and who claims that that

property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane County. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b). No other action to question the validity of or to restrain or enjoin a levy by the department may be maintained.

SECTION 68. 102.835 (7) (a) of the statutes is amended to read:

102.835 **(7)** (a) The department shall apply all money obtained under this section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the ~~uninsured employer~~ debtor.

SECTION 69. 102.835 (12) of the statutes is amended to read:

102.835 **(12)** NOTICE BEFORE LEVY. If no proceeding for review permitted by law is pending, the department shall make a demand to the ~~uninsured employer~~ debtor for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the ~~uninsured employer~~ debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires a signature of acceptance, at the address of the ~~uninsured employer~~ debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including costs and fees, and the name of the ~~uninsured employer~~ debtor who is liable for the debt. The ~~uninsured employer's~~ debtor's failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same ~~uninsured employer~~ debtor within one year after the date of service of the original levy.

SECTION 70. 102.835 (13) (a) of the statutes is amended to read:

102.835 **(13)** (a) The department shall serve the levy upon the ~~uninsured employer~~ debtor and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

SECTION 71. 102.835 (13) (b) of the statutes is amended to read:

102.835 **(13)** (b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the ~~uninsured employer~~ debtor or 3rd party personally; by leaving a copy of the levy at the ~~uninsured employer's~~ debtor's dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment of the ~~uninsured employer~~ debtor with an officer or employee of the ~~uninsured employer~~ debtor; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

SECTION 72. 102.835 (13) (d) of the statutes is amended to read:

102.835 **(13)** (d) The ~~uninsured employer's or 3rd party's~~ failure of a debtor or 3rd party to accept or receive service of the levy does not invalidate the levy.

SECTION 73. 102.835 (14) of the statutes is amended to read:

102.835 **(14)** ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the ~~uninsured employer~~ debtor, including a description of the property or the rights to property and the nature and dollar amount of any such obligation. If the 3rd party is an insurance company, the insurance company shall file an answer with the department within 45 days after the service of the levy.

SECTION 74. 102.835 (19) of the statutes is amended to read:

102.835 **(19)** HEARING. Any ~~uninsured employer~~ debtor who is subject to a levy proceeding made by the department may request a hearing under s. 102.17 to review the levy proceeding. The hearing is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the ~~uninsured employer~~ debtor. The levy is not stayed pending the hearing in any case in which property is secured through the levy.

SECTION 75. 626.35 (1) of the statutes is amended to read:

626.35 **(1)** FILING. An insurer who provides a contract under s. 102.31 (1) (a) or ~~a policy under s.~~ 102.315 (3), (4), or (5) (a) shall file with the bureau a copy of the contract ~~or policy~~ or other evidence of the contract ~~or policy~~ as designated by the bureau, not more than 60 days after the effective date of the contract ~~or policy~~.

SECTION 76. 631.37 (3) of the statutes is amended to read:

631.37 **(3)** WORKER'S COMPENSATION INSURANCE. ~~Section~~ Sections 102.31 (2) ~~applies~~ and 102.315 (10) apply to the termination of worker's compensation insurance.

SECTION 77. 632.98 of the statutes is amended to read:

632.98 Worker's compensation insurance. Sections 102.31, 102.315, and 102.62 apply to worker's compensation insurance.

SECTION 78. Initial applicability.

(1) EMPLOYEE LEASING COMPANY LIABILITY.

(a) *Liability.* The treatment of sections 102.29 (6m) and 102.315 (2), (3), (4), (5), (6), and (8) of the statutes first applies to injuries occurring on the effective date of this paragraph.

(b) *Premiums.* The treatment of section 102.315 (9) of the statutes first applies to a worker's compensation insurance policy insuring liability under section 102.315

(2) of the statutes issued, or extended, modified, or renewed, on the effective date of this paragraph.

(c) *Cancellations, terminations, or nonrenewals.* The treatment of section 102.315 (10) of the statutes first applies to a worker's compensation insurance policy insuring liability under section 102.315 (2) of the statutes whose cancellation or termination date is 30 days after the effective date of this paragraph or whose nonrenewal date is 60 days after the effective date of this paragraph.

(2) PRESCRIPTION DRUG CHARGE DISPUTE RESOLUTION.

(a) *Disputes.* The treatment of sections 102.425 (4) (b) and (4m) of the statutes first applies to prescription drug, as defined in section 102.425 (1) (h) of the statutes, charge disputes submitted to department of workforce development on the effective date of this paragraph.

(b) *Orders.* The treatment of sections 102.16 (1m) (c) and 102.18 (1) (bg) 3. of the statutes first applies to orders under section 102.16 (1) or 102.18 (1) (b) of the statutes issued on the effective date of this paragraph.

(3) CHRISTIAN SCIENCE TREATMENT. The treatment of section 102.42 (1) and (4) of the statutes first applies to Christian Science treatment provided on the effective date of this subsection.

(4) ILLEGALLY EMPLOYED MINORS. The treatment of section 102.64 (2) of the statutes first applies to a proceeding under section 102.60 of the statutes commenced on the effective date of this subsection.

(5) TRAUMATIC INJURIES' ARTIFICIAL MEMBERS. The treatment of sections 102.12, 102.16 (1), 102.17 (4), 102.18 (6), 102.44 (6) (b), and 102.66 (1) and (2) of the statutes first applies to benefits and treatment expenses that are payable on the effective date of this subsection, regardless of the date of injury.

a case of occupational deafness on in which the date of injury is

(6) THIRD-PARTY LIABILITY. The treatment of sections 102.01 (2) (f) and 102.29 (7), (8), (8m), (8r), and (10) of the statutes, the renumbering and amendment of section 102.29 (6) of the statutes, and the creation of section 102.29 (6) (b) of the statutes first apply to injuries occurring on the effective date of this subsection.

(7) INTEREST CREDIT. The treatment of section 102.32 (intro.), (1), (2), (3), (4), (5), and (6m) of the statutes first applies to a party that is discharged from or compelled to guarantee future compensation payments or that is directed to make an advance payment of compensation on the effective date of this subsection.

(8) OCCUPATIONAL DEAFNESS. The treatment of section 102.555 (12) of the statutes first applies to ~~an examination or test for hearing loss, an evaluation of such an exam or test, medical treatment for improving or restoring hearing, or a hearing aid to relieve the effect of hearing loss that is provided on~~ the effective date of this subsection.

(9) LIENS FOR UNINSURED EMPLOYER PAYMENTS. The treatment of section 102.83 (1) (a) 3. of the statutes first applies to a lien under that subdivision that takes effect on the effective date of this subsection.

SECTION 79. Effective date.

(1) This act takes effect on January 1, 2008, or on the day after publication, whichever is later.

(END)

Malaise, Gordon

From: O'Malley, Jim [Jim.O'Malley@dwd.state.wi.us]
Sent: Thursday, November 15, 2007 1:11 PM
To: Malaise, Gordon
Subject: 07-3093P3.pdf

Attachments: 07-3093P3.pdf

07-3093P3.pdf
(183 KB)

Yesterday afternoon, November 14, we had a telephone conference call with the Worker's Compensation Advisory Council (WCAC). The members unanimously agreed that some changes are needed for the language to the amendments to ch. 102, Stats.

On page 2 of the analysis toward the end of the last sentence it states," ... (divided workforce) if DWD has approved a plan under which two policies"... . Under s. 102.315 DWD is to be given notice of a divided workforce plan. There is no requirement for DWD to approve a divided workforce plan. I suggest (divided workforce) with notice of a plan to DWD which two policies are issued..... " .

On pages 9 and 10, Sec. 1, s. 102.01 (2) (f) should not be changed. The WCAC agreed that the definition of "temporary help agency" in this definition paragraph should not be limited to companies in the business of leasing employees. The reason for this is that this change will likely increase disputes between employers that loan employees on an occasional basis and delay payments of compensation to some employees while employers fight each other. Please do not amend this par. for the definition of temporary help agency.

On page 13, Sec. 6, s.102.16 (1m) (b), lines 15-17. Please use the following sentence, " The standards promulgated under sub. (2m) (g)shall be applied by an expert and the department in rendering an opinion as to the necessity of treatment under this paragraph." The WCAC was concerned that where "and by the department" was placed in the draft of the sentence, the meaning was that the department would apply the standards rather than the expert.

On page 19-20, Sec. 15, s. 102.4 (c) and (d), the WCAC believes the language used is confusing. The following language for s. 102.17 (4) (c) and (d) is requested by the WCAC. The language in s. 102.17 (4) (a) and (b) is good.

" 102.17 (4) (c) Benefits or treatment expense for a traumatic injury described in par. (b) becoming due 12 years after the date of injury or last payment of compensation as described in par. (a), whichever date is latest, shall be paid by the employer or insurer, except that payment for expense of repair, replacement, or other treatment relating to an artificial spinal disc or a total or partial knee or hip replacement that was not first supplied within 12 years after the date of such traumatic injury or last payment of compensation as described in par. (a) shall be made as provided in par. (d)."

" 102.17 (4) (d) Benefits or treatment expense becoming due 12 years after the date of injury or death or last payment of compensation as described in par. (a), whichever date is latest, for an occupational disease, or for a traumatic injury described in par. (b),causing the need for an artificial spinal disc or a total or partial knee or hip replacement not first supplied within 12 years after the date of such traumatic injury or last payment of compensation, shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66. "

On page 20, Sec. 16, s. 102.18(1) (bg) 1, the last sentence, lines 18-23, please use the language that was used in the previous draft. S. 102.18 (1) (bg) applies to cases where hearings are held and ALJs issue orders. While I asked a question about whether the language could be interpreted to give health care providers standing to appeal to the commission, we should retain that language. To date we have not had problems or issues with the language. Additionally, Jim Pflasterer, legal counsel for LIRC, also agreed that the language should not be changed. These orders are appeal able to the Labor and Industry Review Commission and if not appealed can be set aside, reversed or modified by the department.

" An insurer or self-insured employer and a health care provider that are parties are bound by the department's determination under this subdivision on the reasonableness of the disputed fee, unless the determination is set aside, reversed, or modified by the department under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23. "

On page 21, Sec.17, s. 102.18 (1) (bg) 2, lines 11-13. Please use the same language that the WCAC recommended for s. 102.16 (1m) (b). " The standards promulgated under sub. (2m) (g) shall be applied by an expert and by the department in rendering an opinion as to the necessity of treatment under this subdivision."

On page 21, Sec. 17, s. 102.18 (1) (bg) 2, last sentence, lines 17-23. Please use the language that was used in the previous draft. See above comments for s. 102.18 (1) (bg) 1.

On page 22, Sec. 18, s. 102.18 (1) (bg) 3, last sentence, lines 11-17. Please use similar language to that in s. 102. 18 (1) (bg) 1 and 2.

The WCAC agreed to amend s. 102.26 (2) to increase the maximum amount of attorney fees payable to attorneys representing employees in cases of admitted liability where there is no dispute as to the amount of compensation due and in which no hearing or appeal is necessary. Under current law the maximum amount of attorney fees payable in these situations is 10% not to exceed $100. The WCAC agreed to increase the maximum dollar amount from $100 to $250.This is a new proposal that I have not forwarded to you before.

On pages 22-23, Sec. 20 and 21, s. 102.29 (6) (a) and (b) the WCAC agrees that this language does exactly what was agreed regarding temporary help agencies. However, the WCAC agreed that on pages 23-26, Sections 22-27 should be deleted.

The WCAC wanted the following used in s. 102.29 (6). I suggest that the following be designated 102.29 (6) (a) and the current par. (a) in the draft be changed to par. (b) and the current par. (b) be changed to par. (c). S. 102.29 (6) (a)." Not withstanding s. 102.01 (2) (f), for purposes of this subsection , a temporary help agency is defined as an employer primarily engaged in the business of placing employees with other employers."

The WCAC and the attorneys they rely on for advice agree that these recommended changes will accomplish what is intended.

On page 35, Sec. 29, s. 102.315 (10) (a) 2, the last sentence, lines 23-24. The worker's compensation insurance carrier gives notice of cancellation of insurance coverage. Please delete the last sentence and add the underlined to the prior sentence , ".....to the cancellation in writing, and notice of the cancellation is provided by the insurer as required under s. 102.31 (2) (a). "

On page 37, Sec. 29, s. 102.315 (10) (b)2, the last sentence, lines 7-8. Please make the same change as above.

On page 41, Sec.40, s.102.425 (4) (b), line 25. Please delete "..... provide reasonable notice...." We should have a 30 day notice. We want this process for disputes involving the pharmacy fee schedule to be similar to the reasonableness of fee dispute process. DWD 80.72 (3). All of the information required in that section is not necessary. I suggest something like the following, ".... the employer or insurer shall mail or provide written notice within 30 days after receiving a completed bill under sub. (4m) (b) to the pharmacist....."

On page 42, Sec.41, s. 102.425 (4m) (b), line 15. Please delete".... provide reasonable notice....". Please use the same language for 30 day written notice as in s. 102.425 (4) (b).

On page 44, Sec. 45, s. 102.44 (6) (b), line 20. The WCAC is very concerned with changing the language from" such employment" to "that employment". The WCAC wants to retain the term" such". S. 102.44 (6) has been the subject of many decisions from LIRC and the courts. This is a crucial provision covering employees' right to bring claims for loss of earning capacity. Loss of earning capacity claims are the big money claims in Wisconsin WC cases. The labor representatives on the WCAC believe that tinkering with this for no compelling reason is an open invitation for more litigation with unintended consequences.

On page 46, Sec.51, s. 102.66 (1), lines 7-9. The WCAC wants to have language in these lines changed to reflect their intention. Please use the following language in lines 7-9," ..... Occupational disease or for a traumatic injury described in s. 102.17 (4) (b), other than a claim for the benefits or expense for an artificial spinal disc or a total or partial knee or hip replacement described in s. 102.17 (4) (c), and the claim is barred solely by the statute of limitations....." .

On page 56, Sec. 78, (8). The WCAC had a discussion and disagreement over the effective date for s. 102.555 (12). The management representatives believe the effective date should be the date the amendment becomes effective and exams, tests, evaluations , and hearing aids provided on and after the effective date should not be compensable. The labor representatives believe that the date of injury occurring on and after the effective date should control. What do you think the appropriate applicability date should be?

We have scheduled another telephone conference call for the members of the WCAC to obtain a

final agreement on the language for the amendments to Ch. 102. It will be appreciated very much if you could have the draft with these changes available by Monday at the latest.

I will be on vacation tomorrow, 11/16/07. If you have any urgent questions you and I am not in the office, you may call Janell Knutson at 266-]6718. Janell is the ALJ Section Chief in Madison and prepares the minutes for the WCAC meeting. She is familiar with the proposed legislation.

Thank you for your work on this project.